

CERTIFICATE OF MAILING  
UNDER 37 CFR 1.8(a)

APPLICANT: MICHAEL E. TOMPKINS, and MICHAEL J. GREEN  
SERIAL NO.: 08/385,062  
FILED: February 7, 1995  
FOR: SPA CONTROL SYSTEM

FAX RECEIVED  
MAY 17 1996  
GROUP 2400

I hereby certify that this correspondence,

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT,  
FORM PTO-1449 AND REFERENCES

is being sent via facsimile #703/305-9731 to:

ASSISTANT COMMISSIONER FOR PATENTS  
WASHINGTON, D. C. 20231

On May 17, 1996

  
M. A. CRABTREE

May 17, 1996

OFFICIAL

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Michael E. Tompkins, and §  
 Michael J. Green §  
 SERIAL NO.: 08/385,062 §  
 FILED: February 7, 1995 §  
 FOR: SPA CONTROL SYSTEM §

GROUP ART UNIT: 2414

EXAMINER:  
E. RAMIREZ

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 GROUP 2400

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Our File Number: 1461-00205

Date: May 17, 1996

Assistant Commissioner for Patents  
 Washington, D.C. 20231

**OFFICIAL**

Sir:

This Supplemental Disclosure Statement, including completed form PTO-1449, includes the deposition of Glenn Gouldey, previously employed by the Temperature Controls Division of the Eaton Corporation, and certain documents which were discussed in his deposition and attached hereto as Exhibit 2. The Defendants in *Steele Industries, Inc. v. Clark Manufacturing, Inc., et al*, C.A. No. H-94-3180 in the United States District Court for the Southern District of Texas, Houston Division, have alleged that Eaton developed a microprocessor-based control called a "Spa Monitor II" over one year prior to the priority date of the above-identified application. The documents included in Exhibit 2 include a product description entitled "Spa Monitor II-Functional Description" having a date of January 13, 1983, a salesman's call report for Hot Water Products dated on or about September 26, 1983, a sales call report for Hot Water Products dated on or about July 20, 1983, a sales call report for Hot Water Products dated on or about August 16, 1983, another product description entitled "Spa Monitor II-Functional Description" having a date of May 24, 1983, and an undated, handwritten diagram entitled "Block

1169

Diagram Spa Monitor" with the name John Shotsky. No software program was produced for the "single chip microcomputer" identified on the block diagram.

Applicants first learned of the document dated May 24, 1983 and the undated block diagram of Exhibit 2 on January 17, 1996 during the deposition of Allan Pinkul. However, Applicants had no knowledge that this document or block diagram might be prior art because Mr. Pinkul testified that he had never seen these documents before and did not know Mr. Shotsky. Further, Mr. Pinkul's deposition and the exhibits discussed therein were marked confidential. As indicated on the attached deposition, Mr. Gouldsey's deposition was taken on March 11, 1996. Thus, the first evidence that the Eaton Spa Monitor II may be prior art was learned less than three months ago by Applicants and individuals described in 37 CFR § 1.56(c).

In the opinion of Applicants, the deposition of Mr. Gouldsey and the disclosure of the documents in Exhibit 2 are less relevant than the prior art previously submitted to the U.S. Patent and Trademark Office by Applicants and at most are merely cumulative to the previously submitted prior art. However, in an over-abundance of caution, Applicants have submitted this information for review by the U.S. Patent and Trademark Office.

The submission of this Supplemental Information Disclosure Statement and Form PTO-1449 is not an admission that the information submitted is prior art or is "prior" with respect to the present invention, nor is it a representation that no better art exists. Applicants hereby reserve the right to swear behind or otherwise disprove any alleged "prior" nature of any art cited should the facts support and the situation warrant such an action.


It is submitted that the art cited does not constitute a bar to the patentability of Applicant's invention under 35 U.S.C. § 102 or 103.

I hereby certify that no item of information in the Supplemental Information Disclosure Statement filed herewith was cited in a communication from a foreign patent office in a counterpart foreign

application or, to my knowledge after making reasonable inquiry, was known to be prior art by any individual designated in § 1.56(c) more than three months prior to the filing of this Supplemental Information Disclosure Statement.

This Information Disclosure statement is being filed under CFR 1.97(c). Please charge Deposit Account 03-2769 of Conley, Rose & Tayon, P.C. the amount of \$130 in payment of the fees forth in CFR 1.17(i) and for any other fees required for the filing of this Supplemental Information Disclosure Statement.

Respectfully submitted,

  
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David A. Rose  
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ATTORNEYS FOR APPLICANT

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